



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

Twelve Oaks Medical Center
c/o HOLLOWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

MFDR Tracking Number

M4-07-1395-01

Carrier's Austin Representative Box

47

Respondent Name

American Casualty Co of Reading

MFDR Date Received

November 7, 2006

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated November 3, 2006: "...The total sum billed was \$182,682.93. There was no on-site audit performed by the insurance carrier...Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...The fees paid by C N A Insurance Company do not conform to the reimbursement section of Rule 134.401...In closing, it is the position of Twelve Oaks Medical Center that all charges relating to the admission of [REDACTED] are due and payable as provided for under Texas law and the Rules of the Division..."

Amount in Dispute: \$56,548.20

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated December 11, 2006: "...The stop-loss reimbursement method is an exception to the rule that was designed to be used in limited and unusual circumstances where the standard per diem reimbursement methodology may not provide adequate reimbursement to the hospital because of unusually costly or extensive services rendered during treatment of the injured worker ...Although Provider billed more than \$40,000 in this case, the evidence does not support that the services provided to the Claimant were unusually extensive and costly ...The Provider has not identified any co-morbidities or complications in this case that required the hospital to provide unusually extensive and costly services beyond that which would normally be provided for this type of surgery and for which the hospital was not properly reimbursed under the standard per diem plus carve outs reimbursement method."

Response Submitted by: Stone Loughlin & Swanson, LLP, P.O. Box 30111, Austin, Texas 78755

Respondent's Position Summary Dated December 15, 2006: "...There is no justification for reimbursement of the surgical implants at 75% of Provider's grossly inflated charges ...Provider has submitted no evidence which would establish that a mark-up of 500% on pass-through items such as implants is usual and customary, as that term is defined. Accordingly, Provider is not entitled to additional reimbursement."

Response Submitted by: Stone Loughlin & Swanson, LLP, P.O. Box 30111, Austin, Texas 78755

Respondent's Position Summary Dated December 14, 2012: "The medical records do not demonstrate that this was an outlier case. There is no evidence that Requestor provided services in this case that would not normally be provided to someone receiving this same type of surgery and that were unusually extensive and unusually costly. Furthermore, Requestor has not identified any specific services it contends were unusually

extensive and it has not established the unusual cost of those services. In short, Requestor has not met its burden of proof.”

Response Submitted by: Stone Loughlin & Swanson, LLP, P.O. Box 30111, Austin, Texas 78755

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
November 10, 2005 thru November 15, 2005	Inpatient Hospital Services	\$56,548.20	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits dated December 27, 2005

- 15 Payment adjusted because the submitted authorization number is missing, invalid or does not apply to the billed service or provider
- (855-024) Service is denied for lack of Proof of Pre-Authorization \$0.00
- 16 Claim/service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remarks codes whenever appropriate.
- (855-022) Charge denied due to lack of sufficient documentation of services rendered \$0.00
- 45 charges exceed your contracted/legislated fee arrangement
- (800-021) Any network reduction is in accordance with the network referenced above
- W1 Workers Compensation State Fee schedule adjustment
- (400-001) The inpatient reimbursement has been based on per diem, stoploss factor or billed charges whichever is less
- W12 Extent of injury. Not finally adjudicated
- (855-010) NC (Non-covered) procedure or service, payment denied

Explanation of benefits dated April 10, 2006

- Check copy only

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for

reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals’ November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier deducted \$4.20 for a personal item in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$182,678.73. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement asserts that “Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor (‘SLRF’) of 75%...” The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was five days; however, documentation supports that the carrier pre-authorized a length of stay of four days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is \$4,472.00 for the four authorized days.
 - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$329/unit for Vancomycin 1gm. The requestor did not submit documentation to support what the cost to the hospital was for this/these item(s) billed under Revenue Code 250. For that reason, reimbursement for this/these item(s) cannot be recommended.

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399).” A review of the submitted hospital bill finds that the requestor billed \$104.00 for revenue code 383 Blood – Plasma, \$732.00 for revenue code 384 Blood – Platelets, \$97.50 for revenue code 390 Blood Processing. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue codes 383, 384, and 390 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Rev Code or Charge Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
81389991	Crosslink	50-60mm, Transverse Link	1 unit @ \$1,095.00 ea	\$1,095.00	\$1,204.50
81389991	Neugraft (6)	Neugraft strip, 6-strip pk	1 unit @ \$1,300.00 ea	\$1,300.00	\$1,430.00
81389991	Set screw lg	M9 X 1.5 Set SCR U & I	1 unit @ \$225.00 ea	\$225.00	\$247.50
81389991	Set screw std	M10x1.5 7.5mm set scr revision & reductn, U&I	1 unit @ \$225.00	\$225.00	\$247.50
81389991	TM500 10mm	10mm tm-500 dev 10x23 ang led	1 unit @ \$3,100.00 ea	\$3,100.00	\$3,421.00
81389991	TM500 10mm	10mm tm-500 dev 10x23 ang led	2 units removed from itemized bill	NA	NA
81389991	TM500 12mm	12mm tm-500 dev 10x23 ang led	1 unit @ \$3,100.00 ea	\$3,100.00	\$3,421.00
81389991	10cm Rod 6.0mm	6.0 x 199 rid U&I	1 unit @ \$300.00 ea	\$300.00	\$330.00
81389991	30cc cubes	Cancellous cubes 30cc F.D. (4-10mm)	3 units @ \$450.00 ea	\$450.00	\$1,485.00
81389991	6.0x40mm screw	6.0 x 40 pedicle scr poly type U & I	1 unit @ \$1,200.00 ea	\$1,200.00	\$1,320.00
81389991	7.0x40mm screw	7.0 x 40 pedicle scr poly type U&I	1 unit @ \$1,200.00 ea	\$1,200.00	\$1,320.00
81389991	7.5x35mm screw	7.0 x 35 pedicle scr poly type U&I	1 unit @ \$1,200.00 ea	\$1,200.00	\$1,320.00
81952509	Was bone 2.5gms	Bone wax 2.5 grams	1 unit from box of 12 @ \$3.42 ea	\$3.42	\$3.76
TOTAL ALLOWABLE				\$15,750.26	

The division concludes that the total allowable for this admission is \$20,222.26. The respondent issued payment in the amount of \$80,460.85. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

Date

Signature

Medical Fee Dispute Resolution Manager

Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service demonstrating that the request has been sent to the other party.***

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.